

Agenda Date: March 31, 2005  
Item Number: A3

Docket: **UT-050313**

Company Name: Verizon Northwest Inc.

Staff: Paula Strain, Telecommunications Expert  
Kathy Folsom, Senior Telecommunications Analyst

### **Recommendation:**

Allow Verizon Northwest Inc.'s tariff filing, as amended on March 29, 2005, to become effective on April 1, 2005, by operation of law.

### **Background:**

On February 28, 2005, Verizon Northwest Inc., ("Verizon") filed Advice No. 3138 in Docket UT-050131 to comply with the Order on Remand issued by the Federal Communications Commission (FCC) on February 4, 2005, in WC Docket No. 04-313 and CC Docket No. 01-338 (Triennial Review Remand Order, or TRRO). The provisions of the TRRO became effective as of March 11, 2005.

Verizon filed Original Tariff Sheets 3 and 4 and Section 2 of Tariff WN U-21, Unbundled Network Elements, effective April 1, 2005<sup>1</sup>. The tariff addresses Verizon's provision of the following services: DS-1 and DS-3 Loops, Dark Fiber Loops, DS1 and DS3 Dedicated Transport, Dark Fiber Dedicated Transport and Local Circuit Switching. The tariff sheets contain the rates that apply when Verizon is not required to offer these services as UNEs using the criteria set forth in the TRRO. For these services, the tariff reflects a 12-month transition period beginning March 11, 2005, during which the company is not obligated to offer the services as UNEs, but must provide them at transitional rates. The proposed rates contained in the tariff revision mirror the transitional rate provisions contained in the TRRO, which consist of either percentages or set dollar amounts applied to the UNE rates established by this Commission.

### **Discussion:**

Verizon's tariff revisions cannot be viewed in isolation. Section 1, Application of the Tariff, WN U-21 sets forth rates for Unbundled Network Elements (UNEs) for registered Competitive Local Providers (also known as Competitive Local Exchange Carriers, or CLECs). It states, "Unless otherwise specified in this tariff, the terms and conditions for ordering, provisioning, billing, maintenance and liabilities will be governed by the CLP Interconnection Agreements."

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<sup>1</sup> Verizon initially requested approval on less than statutory notice (LSN) with an effective date of March 17, 2005. It subsequently withdrew its request and extended the effective date of its proposed tariff to April 1, 2005.

Of more concern, Section 2 of WN U-21 states that “The general regulations, terms and conditions for the UNEs listed in this tariff will be governed under the CLP’s Interconnection Agreement **until such time as the Commission adopts tariffed terms and conditions.**” (emphasis added). This language could potentially allow Commission-adopted tariff revisions to “trump” terms and conditions in the carriers’ interconnection agreements.

Staff raised this concern with Verizon’s representative. In response to the Staff’s concerns Verizon has agreed to amend its tariff to delete the conditional language shown in the previous paragraph (bold), and to clarify that carriers’ interconnection agreements will govern the terms and conditions under which the UNEs in this tariff will be offered.

Staff also notes that terms and conditions regarding the implementation of the TRRO are being addressed by Verizon and several CLECs in the arbitration proceeding currently before the Commission, Docket UT-043013. The arbitration petition was filed in response to the FCC’s Triennial Review Order (TRO) issued in August 2003. However, in briefs filed on March 11, 2005, in this Docket, Verizon and other parties to the arbitration have raised issues pertaining to implementation of the requirements of the TRRO in the interconnection agreements.

#### **Comments from other Parties:**

On March 9, 2005, Davis Wright Tremaine, LLP, filed an objection to the proposed tariff on behalf of Advanced TelCom, Inc., Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., Pac-West Telecomm, Inc., Tel West Communications, LLC, Time Warner Telecom of Washington, LLC, and XO Washington, Inc. (“Joint CLECs”). The Joint CLECs claim the Verizon filing is “both procedurally and substantively improper” as well as a violation of the FCC’s TRRO. They point out that the TRRO at paragraph 233 requires the incumbent LEC and CLECs to negotiate in good faith any rates, terms and conditions contained in their ICAs that are necessary to implement the FCC’s rule changes. They complain that Verizon’s tariff proposal leaves no room for such negotiations to occur during the transition period laid out in the FCC rules.

The Joint CLECs also point to the ongoing arbitration proceeding requested by Verizon to address the implementation of amendments to Verizon’s ICAs to reflect the provisions of the FCC’s Triennial Review Order. The arbitration proceeding, WUTC Docket UT-043013, includes 18 CLECs as parties. The Joint CLECs request that the Commission reject the filing or, alternatively, to suspend the tariff revisions subject to review of their terms and conditions in the Verizon TRO Amendment Arbitration docket, UT-043013.

Also on March 9, 2005, Electric Lightwave, Inc. (ELI) filed a letter in support of the Joint CLECs’ protest to Verizon’s proposed tariff revisions, stating that the tariff was inconsistent with the Commission’s previous orders regarding the tariff, and with the FCC’s TRRO. It urged the Commission to reject the filing.

**Conclusion and Recommendation:**

The removal of the conditional language in Section 2 of WN U-21 assuages Staff's concerns that terms and conditions contained in the tariff could conflict with those contained in Verizon's interconnection agreements with other carriers. Therefore, Staff recommends that the Commission allow Verizon Northwest Inc.'s tariff filing, as amended on March 29, 2005, to become effective on April 1, 2005, by operation of law.